



December Members Update

Dear member,

Welcome to the December 2018 member's update.

This month we look at the new/updated National Employment Standard - Family and domestic violence leave – as well as addressing certain provisions when it comes to shutdown periods over Xmas.



1. Family & Domestic Violence Leave

On 1 August 2018, all industry and occupation awards were updated to include unpaid family and domestic violence leave.

Effective 12 December 2018, entitlement to unpaid family and domestic violence leave was introduced as part of the National Employment Standards (NES). Similar to compassionate leave, unpaid family and domestic violence leave falls under the "Personal/Sick" leave banner.

All employees (including part-time and casual employees) are entitled to 5 days unpaid family and domestic violence leave each year.

- Employees are entitled to the full 5 days from the day they start work. -i.e it does not accrue over time
- The 5 days renews each 12 months but doesn't accumulate from year to year if it isn't used.

Time can be taken to (but isn't limited to):

- make arrangements for personal safety, or the safety of a family member
- attend court hearings
- access police services.

An employer can ask their employee for evidence that shows the employee took the leave to deal with family and domestic violence – eg documents issued by the police service, documents issued by a court, family violence support service documents, or a statutory declaration.

Family and domestic violence means violent, threatening or other abusive behaviour by an employee's close relative that:

- > seeks to coerce or control the employee
- > causes them harm or fear.

A close relative is:

- > an employee's:
 - > spouse or former spouse
 - > de facto partner or former de facto partner
 - > child
 - > parent
 - > grandparent
 - > grandchild
 - > sibling
- > an employee's current or former spouse or de facto partner's child, parent, grandparent, grandchild or sibling, or
- > a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

2. Xmas/New year PH and annual shutdown

With the festive season upon us, employers have obligations when it comes to Public Holidays and leave taken during a Xmas shut-down period.



Many awards contain provisions about how and when an employer can direct an employee to take leave. The simplest way to determine the provisions in some Awards is to use the Fair Work website for the more common modern awards -

For example, the **Clerks Private Sector Award** states ***“an employer may require an employee to take annual leave as part of a close-down of its operations, by giving at least four weeks’ notice”*** whilst the **Building and Construction Award** requires ***“at least 2 months’ notice”*** and the **Fast Food Industry Award** states that the ***employer cannot direct the employee to take leave but the employer and the employee may agree that leave can be taken.***

There are further rules as to what happens if a worker does not have enough annual leave – most Awards provide that the worker can take leave in advance or LWOP. Some awards go on to say that if the worker does not agree to take AL in advance or LWOP, they will be paid their ordinary rate of pay.



If the award or agreement doesn't have rules about annual leave during shutdowns, an employer can't direct an employee to take leave. However, an employer and employee can agree that the employee takes annual leave (including in advance of accrual) or unpaid leave for the shut down time. The employee can't be forced to take unpaid leave, so if an agreement can't be reached with their employer, they need to be paid their ordinary pay for the time.

For Award free employees, an employer can direct them to take annual leave if the direction is reasonable. An example of what would be deemed "reasonable" is that the organisation as a whole, or a particular department is shutting down. An employer directing an employee to take annual leave where that part of the business is still in operation during the Xmas period would not be deemed reasonable.



The Australian Payroll Association will have their annual shutdown from COB 21/12/2018 and will return on 7/1/2019. We wish all our members and their loved ones a very safe and happy holiday season.